IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11236 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP HEMRAJ BARCHHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11236 of 2003

MR PAHWA for M/S THAKKAR ASSOC. for Petitioner No. 1

MS MITA PANCHAL A.G.P. for Respondent No. 1-3

MS PJ DAVAWALA Standing counsel for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/09/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the

District Magistrate, Jamnagar on 11.07.2003 against the petitioner in exercise of powers conferred upon him under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "P.B.M. Act.") directing the detention of the petitioner and in pursuance of which the petitioner came to be detained from 11.07.2003.

2. The ground placed on record and served upon the petitioner reveal that the petitioner is an employer of M/s. Momai Traders and was authorised to sale free-sale kerosene. In this respect on 12.06.2003 the supply department of Jamnagar, inspected the establishment of the petitioner. It was found that at village Sarmat, District Jamnagar on State highway near hotel Janmeshwar and at village Nani-Khavadi on State highway, the petitioner was doing business of free-sale kerosene. The petitioner was as per the control orders published in Essential Commodities Act, required to observe all necessary provisions of law. On checking, it was found that the petitioner was not maintaining his daily accounts of the free-sale kerosene according to law. In his both the establishments, from the stock register, it was found that the bulk of kerosene which was purchased by the petitioner was not accounted in the books of account. In books of account, less bulk of kerosene was found than the actual purchased by the petitioner from other persons. Unaccounted bulk of kerosene according to the authorities was to the extent of 8140 liters. It was also found that the said unaccounted bulk of kerosene was unauthorisedly sold by the petitioner. After necessary formalities, statement of the petitioner was also recorded, in which the petitioner admitted the irregularity committed by him. Therefore, the proposing authority submitted all the relevant material to the detaining authority and after going through all the relevant material, the detaining authority came to the conclusion that the activities of the petitioner was prejudicial in maintenance and supply of essential commodities like kerosene. Since the detaining authority found that there was no other alternative except to detain the petitioner to prevent him from acting prejudicial to the maintenance of supply of commodities essential to the community. The order impugned was passed by him.

3. Learned advocate Mr.Pahwa for M/s. Thakkar Associates for the petitioner, Ms.Mita Panchal learned A.G.P. for respondents nos.1, 2 and 3 and Ms.P.J. Davawala learned Additional Standing Counsel for respondent no.4 - Union of India were heard at length.

The affidavit-in-reply filed by the Food and Public Distribution, of the Central Government, on behalf of respondent no.4 - Union of India which is placed on record is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the respondents, it appears that this Special Civil Application can be disposed of on the sole ground that whether right of the detenu for making effective representation as guaranteed under Article 22 (5) of the Constitution of India is breached. My attention is drawn to documents placed at page 197 and 199 of the compilation of this Special Civil Application. These are the documents which were served upon the petitioner alongwith the grounds. On going through these documents, it clearly appears that these documents are partly illegible. The detaining authority is required to supply legible documents so as to enable the detenu to make effective representation. But as said above, both the documents referred to are partly illegible and consequently, the right of detenu for making effective representation has been infringed in this case. This view is fortified by a decision of this Court in the matter of Pokhrajbhai Sohanbhai Chandel v. District Magistrate, Surat & Ors. reported in 1991 (2) G.L.R. 753. Therefore, the order impugned in Special Civil Application is required to be quashed and set-aside on this ground alone, because when the right of the detenu is breached for making effective representation, his further detention becomes bad in law.

In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Jamnagar on 11.07.2003 in exercise of powers conferred upon him by Section 3 (2) of the P.B.M. Act, against the petitioner is quashed and setaside. It is directed that the petitioner be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute.

[J.R. VORA, J.]

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